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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

ORIGINAL

UNITED STATES DISTRICT COURT

Southern District of California

SAN DIEGO MINUTEMEN, An
Unincorporated Association,

Plaintiff,

vs.

CALIFORNIA BUSINESS
TRANSPORTATION AND HOUSING
AGENCY'S DEPARTMENT OF
TRANSPORTATION; DALE BONNER in
his Official Capacity as Agency Director,
Business, Transportation and Housing
Agency; WILL KEMPTON in his Official
Capacity as CalTrans Director; PEDRO
ORSO-DELGADO in his Official Capacity
as Caltrans District Director and DOES 1
through 50,

Defendants.

Case Number:

08 CV 0210 WQH RBB

DECLARATION OF JEFF SCHWILK IN
SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

I, Jeff Schwilk, declare as follows:

1. That I am the Spokesman of plaintiff SAN DIEGO MINUTEMEN, an unincorporated association.
2. That all of the facts set forth herein are true and correct and are within my own personal knowledge and if called upon to testify thereto, I could truthfully and competently do so.
3. That the mission of the SAN DIEGO MINUTEMEN association is to uphold the laws

1 of the United States of America and the state of California and not to be involved in any violent
2 actions or confrontations. The Mission Statement of the SAN DIEGO MINUTEMEN is as follows:

3 "To demand maximum border security and immigration enforcement
4 both locally and at the national level. We oppose illegal immigration
5 in all parts of San Diego County with our activism. We assist and
6 support the U.S. Border Patrol in securing the U.S.-Mexican border
7 from terrorists, gang members, criminals, drugs, and illegal aliens
8 entering the United States. We also assist ICE (Immigration &
Customs Enforcement) and local law enforcement in exposing law
breaking employers and helping to return illegal aliens to their
country of legal residence. We act on behalf of and in accord with the
United States Constitution and the Bill of Rights."

9 4. Attached hereto as Exhibit "1" is a true and correct copy of a photograph of an Adopt-
10 a-Highway sign near the United States Border Patrol checkpoint on Interstate 5 at San Onofre,
11 California. The only words on the sign which are not generic CALTRANS verbiage are "SAN
12 DIEGO MINUTEMEN," the specific name of our association.

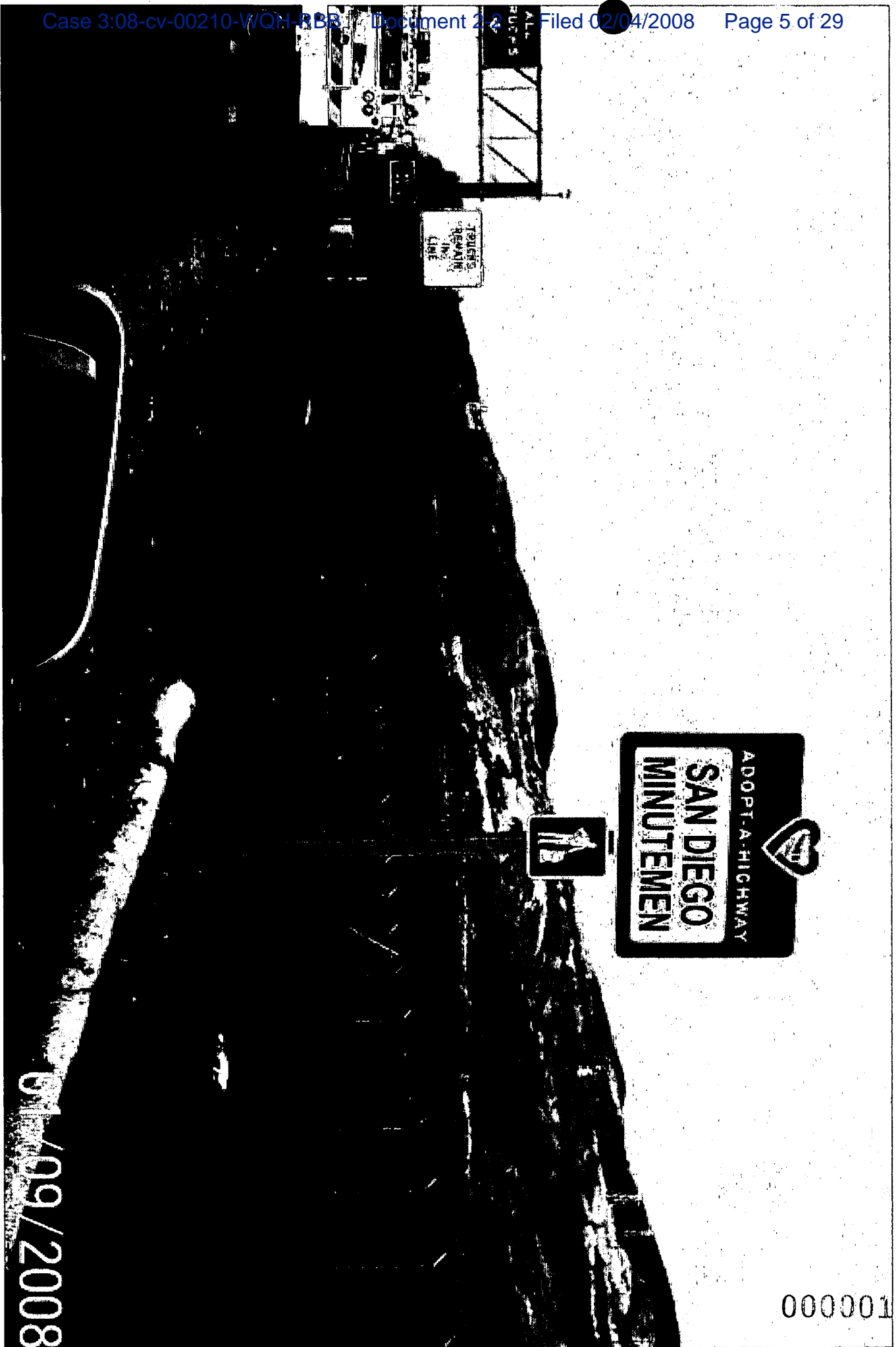
13 5. Attached hereto as Exhibit "2" is a true and correct copy of a photograph taken on or
14 about January 17, 2008 showing members of the SAN DIEGO MINUTEMEN picking up trash along
15 Interstate 5 near San Onofre, California and the CalTrans Adopt-a-Highway sign mentioning the
16 name of plaintiff, SAN DIEGO MINUTEMEN. A review of said photograph reveals that the SAN
17 DIEGO MINUTEMEN are picking up trash without commotion or violence, are not carrying signs
18 or placards, are not waiving to passing traffic, and are dressed in ordinary CalTrans work clothes
19 including safety helmets and vests.

20 6. Attached hereto as Exhibit "3" is a true and correct copy of a letter I received dated
21 January 28, 2008 from PEDRO ORSO-DELGADO, a CalTrans District Director.

22 7. Attached hereto as Exhibit "4" is a true and correct copy of a letter I received dated
23 November 19, 2008 addressed to the SAN DIEGO MINUTEMEN and to my attention from
24 CalTrans indicating that the permit issued is a "legal and binding" agreement with CalTrans.

25 8. Attached hereto as Exhibit "5" is a true and correct copy of the permit which the SAN
26 DIEGO MINUTEMEN received from CalTrans. This permit is site specific to "Perform the
27 following activities on 11-SD-005 PM 66.3-68.3 N/B" as the location we are permitted to clean in
28 "DISTRICT / COUNTY / ROUTE / POST MILE RANGE / DIRECTION(S)" mapping format.

Exhibit 7



01/09/2008

000001

Exhibit 2

SAN DIEGO MINUTEMEN



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Exhibit 3

DEPARTMENT OF TRANSPORTATION

4050 TAYLOR STREET
SAN DIEGO, CA 92110
PHONE (619) 688-6668
FAX (619) 688-3122
TTY 711



*Flex your power!
Be energy efficient!*

January 28, 2008

Mr. Jeff Schwilk
San Diego Minutemen
3809 Plaza Drive, 107-133
Oceanside, CA 92056

Dear Mr. Schwilk:

As the owner and operator of the State Highway System, the California Department of Transportation (Department) is responsible for the safety of its property and the facilitation of movement on that system. The location of your existing Adopt-a-Highway (AAH) permit has raised questions regarding public safety due to the proximity of your assigned highway segment to a U.S. Border Patrol facility that is co-located with the California Highway Patrol (CHP) San Onofre Inspection facility. Your group has also indicated concerns regarding possible vandalism to the courtesy sign displaying your participation in the AAH Program and the release of information relative to the days you will perform the required clean up.

Based on these issues, and in consultation with the CHP, the Department has concluded that your organization's participation in the AAH Program at the current location, as set forth in Permit No. 11-07NAH0586, poses a significant risk of disruption to the operation of the State highway, as well as public safety concerns for both the traveling public and participants in the AAH Program. As a result, Permit No. 11-07NAH0586 is hereby modified and the related courtesy sign will be moved. The Department has identified another more suitable location along State Route 52 near Santee for assignment to your organization under this program.

Please be advised that the Department is currently examining allegations of violent behavior and/or advocacy of violence by your group. Under the AAH Program eligibility criteria, entities that advocate violence, violation of the law, or discrimination based upon race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or sexual orientation may not participate in the Program. These allegations warrant careful examination, and the Department will conduct this review in an expeditious fashion.

Jeff Schwilk
January 28, 2008
Page 2

The Department does appreciate the support of private groups to help keep our highways clean. However, safety is our paramount concern. If you have any questions regarding this letter, please contact me.

Sincerely,



PEDRO ORSO-DELGADO
District Director

c: Will Kempton, Director of Transportation
Mike Brown, Commissioner, California Highway Patrol
Skip Carter, Chief, Border Division, California Highway Patrol

Exhibit 4

STATE OF CALIFORNIA-BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

DISTRICT 11 MAINTENANCE PROGRAM

4050 TAYLOR STREET MS 220

SAN DIEGO, CA 92110

PHONE: (619) 688-3327

FAX: (619) 688-3314



*Flex your power!
Be energy efficient!*

Monday, November 19, 2007

San Diego Minutemen
Attn: Jeff Schwilk
3809 Plaza Dr. 107-133
Oceanside, CA 92056

Adoption Type: Litter Removal
Work Frequency: 24 times per year
Location: NB 5: SD 66.3 - SD 68.3
Freeway Section

Dear Mr. Schwilk:

Welcome to the Caltrans Adopt-A-Highway Program! Your Adopt-A-Highway Encroachment Permit should arrive in the mail within the next few weeks. The permit is a legal and binding document that contains important safety information, so please review it thoroughly. Once you receive your permit, there will be three items to complete before you can begin to work.

First, you must call Caltrans to schedule a safety orientation. This should be done within two weeks of your permit's start date. The purpose of the orientation is to discuss safety procedures and to issue supplies, safety equipment, and safety-training materials.

Next, you must provide safety training and safety equipment to the participating members of your group.

Finally, you must contact your Caltrans field representative at least five days prior to your work event. Please keep in mind that you will be expected to begin work within 30 calendar days of your permit's start date, even if your signs have not yet been installed.

Dave Salerno, (760) 438-4979, will be providing your safety orientation and is also your Caltrans field representative.

I hope that you find participating in the Adopt-A-Highway Program a rewarding and enjoyable experience. However, if you feel that you cannot keep up with the commitment, you will be able to cancel your adoption without penalty. Please feel free to call me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Wharton".

Larry Wharton
District 11 Adopt-A-Highway Coordinator
(619) 688-3327



ADOPT-A-HIGHWAY

"Caltrans improves mobility across California"

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Exhibit 5

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
ENCROACHMENT PERMIT (ADOPT-A-HIGHWAY)

TR-0121 (REV. 01/2002)

In compliance with (Check one):

- ☒ Your application of September 18, 2007
- ☐ Utility Notice No. _____ of _____
- ☐ Agreement No. _____ of _____
- ☐ R/W Contract No. _____ of _____

| | |
|---------------------------------------------|-------------------------------|
| Permit No. 11-07NAH0586 | |
| Dist/Co/Rte/PM 11-SD-005 / 66.3-68.3 N/B | |
| Date November 21, 2007 | |
| Fee Paid \$ N/C | Deposit \$ |
| Performance Bond Amount (1) \$ | Payment Bond Amount (2) \$ |
| Bond Company | |
| Bond Number (1) | Bond Number (2) |

TO: SAN DIEGO MINUTEMEN
3809 PLAZA DRIVE, 107-133
OCEANSIDE, CA 92056

JEFF SCHWILK 760.525-1655

, PERMITTEE

and subject to the following, PERMISSION IS HEREBY GRANTED to:

Perform the following activities on 11-SD-005 PM 66.3-68.3 N/B Frequency: Twice per month

DISTRICT / COUNTY / ROUTE / POSTMILE RANGE / DIRECTION(S)

- ☒ Litter Removal. ☐ Seedling Tree and Shrub Planting.
- ☐ Graffiti Removal. ☐ Wildflower Planting and Vegetation Control.
- ☐ Vegetation Control. ☐ "Spot" Wildflower Planting.
- ☐ Recognition Panel Replacement. (By contractors only. Panels must be approved by the Department.)
- ☐ Other, describe: _____

NO ONE UNDER 16 YEARS OF AGE IS ALLOWED TO PARTICIPATE ON STATE RIGHT-OF-WAY.

THIS PERMIT IS NOT A PROPERTY RIGHT AND DOES NOT TRANSFER WITH THE PROPERTY TO A NEW OWNER.

The following attachments are also included as part of this permit (Check applicable):

- ☒ Adopt-A-Highway Permit Special Provisions. ☐ Planting Plan, Work Plan, and Work Schedule.
- ☐ Vegetation Control Plan, Work Plan, and Work Schedule. ☐ _____

ADVANCED NOTIFICATION OF WORK: Before each work occasion, the Permittee shall notify the Department's Maintenance Field Representative at least five working days, but no more than one month, prior to start of any work to ensure coordination with other activities. Dave Salerno 6050 Paseo Del Norte Carlsbad, Ca. 760.438-4979

DEPARTMENT'S MAINTENANCE FIELD REPRESENTATIVE

PHONE NUMBER

Permittee's work shall be subordinated to State operations and shall not interfere with State forces or State's contractors.

- ☐ Yes ☐ No The information in the environmental documentation has been reviewed and considered prior to approval of this permit.

This permit expires on November 30th, 20 12

This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.

No project work shall be commenced until all other necessary permits and environmental clearances have been obtained.

Larry Wharton, Distr Adopt A Hwy Coordinator, (619) 688-3327
Permits
Permittee
Merl Nusz, Region Manager
Dave Salerno, Inspector

APPROVED:

BY:

PEPPO ORSO-DELGADO, District Director

J. M. MARKEY, District Permit Engineer

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

ATTACHMENT A (ADOPT-A-HIGHWAY SPECIAL PROVISIONS)

MTCE-09 (REV 3/2006)

1. DEPARTMENTAL CONTACTS:

District Adopt-A-Highway Coordinator (Processes applications, answers questions regarding program policy, maintains program data, receives contact information changes.)

Name: Larry Wharton or current District 11 Adopt-A-Highway Coordinator Phone: (619) 688-3327

Address: Caltrans Maintenance Program, 4050 Taylor Street MS 220, San Diego, CA 92110

Representative Providing Safety Orientation (Answers safety-related questions, provides initial supply of safety equipment.)

Name: Dave Salerno or current CT Maintenance Supervisor Phone: (760) 438-4979

Address: Carlsbad Maintenance Station, 6050 Paseo Del Norte, Carlsbad, CA 92008

Maintenance Field Representative (Receives five-day advance notice of work, provides additional supplies and equipment throughout the permit period, arranges for collection of filled litter bags, hazardous materials, and large items.)

Name: Dave Salerno or current CT Maintenance Supervisor Phone: (760) 438-4979

Address: Carlsbad Maintenance Station, 6050 Paseo Del Norte, Carlsbad, CA 92008

2. WORK FREQUENCY (Check all that apply):

- ☒ Litter shall be removed a minimum of 24 times per year.
☐ Graffiti shall be removed within ____ calendar days of notification.
☐ Vegetation shall be controlled a minimum of ____ times per year.
☐ Planting, vegetation control, and other activities shall be performed per permittee's attached plans and schedules.

3. PARTICIPATION OF MINORS

- ☐ Minors, aged 16 and 17, are authorized to work at this location.
☒ Persons under the age of 18 are **not** authorized to work at this location.

4. WORK DAYS AND HOURS

Work shall **not** be performed during the holiday periods listed in item 9 of the Special Provisions. **In addition, work shall not be performed:**

No additional restrictions.

Weather permitting, litter removal groups shall schedule work during the national cleanup events listed in item 10 of the Special Provisions. **In addition, work shall be performed:**

No additional scheduling restrictions.

5. SITE ACCESS – Direction 1: NB 5 SD 66.3 - SD 68.3

Walk-on entry and exit points? ☒ Yes ☐ No
 Shoulders for drop-off and pick-up? ☒ Yes ☐ No
 Space to park off of shoulders? ☒ Yes ☐ No

Comments/Recommendations:
 None.

SITE ACCESS – Direction 2:

Walk-on entry and exit points? ☐ Yes ☐ No
 Shoulders for drop-off and pick-up? ☐ Yes ☐ No
 Space to park off of shoulders? ☐ Yes ☐ No

Comments/Recommendations:

6. WORK PROCEDURES – Direction 1: WORK PROCEDURES – Direction 2:

Begin: At Adopt-a-Highway sign located at postmile 66.2

Begin:

End: At next Adopt-a-Highway sign.

End:

In addition to the restrictions listed in item 14 of the Special Provisions, work may **not** be performed in the following portions.

Direction 1:

Direction 2:

| | | |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| DATE PREPARED 11/19/2007 | ADOPT-A-HIGHWAY COORDINATOR SIGNATURE  | GROUP NAME/CONTRACTOR NAME San Diego Minutemen, 1107 NAH 0586 |
| ADOPTION TYPE Litter Removal | | ADOPTION SITE LOCATION TYPE Freeway Section |

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

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Exhibit 6

ADOPT-A-HIGHWAY PERMIT SPECIAL PROVISIONS

TR-0156 (Rev. 06/2007)

1. **AUTHORITY:** The Department's authority to issue encroachment permits is provided under, Division 1, Chapter 3, Article 1, Section 660 to 734 of the Streets and Highways Code.
2. **REVOCATION/CANCELLATION:** This permit may be revoked by the Department for noncompliance with permit provisions or for failure of the permittee, or their representative, to adhere to direction given by a Departmental representative. These provisions are subject to modification or abrogation at any time. This permit may be temporarily suspended due to construction or other State operations at, or within, the vicinity of the site.

Permittee may cancel their permit at any time without consequence from the Department. Permittees using contractors are responsible for terminating those arrangements.
3. **ASSIGNMENT:** No parties other than the permittee, or permittee's authorized representatives, are allowed to work under this permit.
4. **ACCEPTANCE OF PROVISIONS:** Permittee understands and agrees to accept these Adopt-A-Highway Permit Special Provisions and all attachments to this permit, for any work to be performed under this permit. It is understood and agreed by the permittee that performing work under this permit shall constitute acceptance.
5. **PERMITTEE RESPONSIBILITY:** No person shall enter the State's right of way to perform work until the Department's representative has given the permittee's safety/crew leader a safety orientation, and, all participants have received safety training from the permittee's safety/crew leader as described in items 20 and 24.

It is the responsibility of the permittee to notify the District Adopt-A-Highway Coordinator of any change of permittee's address, phone number, or contact person.
6. **PLAN CHANGES:** Changes to plans, specifications, and permit provisions are not allowed without prior approval from the Department.
7. **PARTICIPATION OF MINORS:** No minors under the age of 16 are permitted to work on State right of way. Certain sites are restricted to adult participants, aged 18 and older. Attachment A (Adopt-A-Highway Special Provisions) item 3, specifies the age requirement for your site. If minors, aged 16 and 17, are permitted, there must be one adult supervisor for every five minors present at the work site. The adult supervisor must be at least 21 years old and must walk along with the group.
8. **BEGINNING OF WORK:** Work authorized by this permit shall begin within 30 calendar days from the date of issuance, regardless of whether or not the permittee's Adopt-A-Highway courtesy sign(s) and/or recognition panel(s) have been installed.
9. **ADVANCE NOTICE OF WORK:** Permittee must notify the Maintenance Field Representative listed on Attachment A (Adopt-A-Highway Special Provisions) of their plans to work at least five days, but no more than one month, before the event.
10. **WORK DAYS AND HOURS:** Work must be performed during daylight hours. If weather (or other adverse circumstance) causes decreased visibility or a public hazard, work shall immediately be discontinued. Work shall not be conducted on, or within twenty-four hours preceding, the following holidays or holiday weekends: New Year's Day, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, Presidents' Day, Cesar Chavez's Birthday, Easter, Memorial Day, Independence Day (July 4th), Labor Day, Columbus Day, Veteran's Day, Thanksgiving and the day after, and Christmas. Unless specified, work is permitted the day following a legal holiday or holiday weekend.
11. **PARTICIPATION IN STATEWIDE EVENTS:** Weather permitting, litter removal groups shall schedule work during the "Great American Cleanup-California" (March-May) and "California Cleanup Day" (September) events in order to support Adopt-A-Highway's participation in national and international cleanup events.
12. **CONFLICTING ENCROACHMENTS:** Permittee shall yield start of work to ongoing, prior authorized, work adjacent to or within the limits of the project site.
13. **PERMIT AT WORK SITE:** Permittee shall keep the complete permit package (Adopt-A-Highway Encroachment Permit, Adopt-A-Highway Permit Special Provisions, and if applicable, plans and work schedule) or a copy thereof, at the work site and show it upon request to any Department representative or law enforcement officer. If the permit package is not kept and made available at the work site, the work shall be suspended. In addition, a copy of the encroachment permit must be displayed in the windshield of each vehicle parked on the right of way. Vehicles without permits may receive traffic citations.
14. **PARKING AT THE WORK SITE:** Participant's personal vehicles shall not interfere with the free flow of traffic or pedestrians. Vehicles used to transport participants or materials may legally park on the right of way provided that they are located completely *off of the pavement and a minimum of six feet from any traffic lane*. If this is not possible, participants must walk to and from the site or, if the site has a shoulder, participants can use a drop-off and pick-up arrangement.
15. **WORK PROCEDURES:** Work shall proceed in the direction facing traffic. A posted safety lookout shall be used when fellow participants are unable to watch oncoming traffic.

Work shall not be performed on or within six feet from any traffic lane or on median strips. Participants shall not walk or run across access-controlled highways (freeways), including on-ramps and off-ramps. Participants shall not work on unstable or slippery ground, on slopes greater than approximately 40°, on bridges, in tunnels, or inside culverts. Unless excluded by the aforementioned conditions, or entered on Attachment A, Work Procedures, litter removal and vegetation control shall be performed behind soundwalls.
16. **PUBLIC TRAFFIC CONTROL:** Unless specifically checked and described as an "Other Adoption Type," all forms of traffic control, including shoulder closures, are prohibited under this permit.
17. **SAFETY EQUIPMENT:** It is required that all participants wear hard hats, safety vests, gloves, and protective eye wear while on the State's right of way. The Department will provide these and, if needed, litter pickers to volunteers free of charge. In addition, participants are required to wear long pants and substantial leather shoes or boots with ankle support. Any State-furnished, personal protective equipment, unused materials, and tools shall be returned upon termination of the permit.
18. **LITTER BAGS:** Participants shall use white, Adopt-A-Highway bags provided by the Department. Securely tied, filled bags must be placed at least six feet from the edge of traffic lanes and off of paved shoulders. Bags must be placed in locations where they are not obstructing drainage and where Departmental maintenance forces can easily see them and safely retrieve them. Whenever possible, bags

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ADOPT-A-HIGHWAY PERMIT SPECIAL PROVISIONS

TR-0156 (Rev. 06/2007)

should be stacked together and/or placed 100 feet from structures. It is important for participants to leave their filled bags at the site so that the Department can verify that work frequencies are being met. Also, the monthly count of white bags collected, enables the Department to quantify the value of the Adopt-A-Highway Program. (Participants may take bags of recyclables home.)

- 19. STORAGE OF EQUIPMENT AND MATERIALS:** Unless specified in the Permittee's planting and/or work plans, storage of equipment and materials (other than filled, Adopt-A-Highway litter bags) on the State right of way is not authorized under this permit.

20. SAFETY PROCEDURES FOR VOLUNTEER GROUPS:

- A. Designate a safety leader.** Each permittee shall designate a safety leader to represent the group. Unless otherwise notified, the Department considers the safety leader to be the individual whose name appears on the attached encroachment permit.
- B. Attend a Caltrans safety orientation.** The designated safety leader shall schedule and attend a safety orientation given by the Department's representative within two weeks of this permit's date of issue. The "Adopt-A-Highway Safety Orientation Checklist for Volunteers" will be reviewed, signed, and a copy given to the permittee. New safety leaders, appointed during the permit period, must make arrangements to attend a safety orientation by a Departmental representative, not by the Permittee's previous safety leader.
- C. Obtain safety equipment:** Safety equipment and a copy of the Adopt-A-Highway safety video shall be issued during the Caltrans safety orientation. Participants who need them will also receive Adopt-A-Highway litter bags and litter pickers. Additional safety equipment and litter bags may be obtained as needed throughout the permit period from the Department's Maintenance Field Representative.
- D. Provide safety training to all group members.** The safety leader shall then provide safety training for all participants before they attend a work event. The encroachment permit and special provisions must be explained and part two of the Adopt-A-Highway safety video must be viewed.
- E. Conduct safety reviews before each work event.** Safety leaders must conduct a brief, off-site safety review each time the group goes out to work. The "Safety Requirements for Participants" and the "Bag It, Move It, or Leave It?" handouts should be reviewed. Safety leaders shall ensure that all participants are equipped with safety gear and that minors will be adequately supervised.
- F. Provide annual safety training.** Safety leaders must hold an annual safety training refresher for all participants. Once again, the encroachment permit and special provisions shall be explained and part two of the Adopt-A-Highway safety video viewed.
- G. Report Injuries, Accidents, and Incidents.** The following occurrences shall be reported to the District Adopt-A-Highway Coordinator by the next business day: injuries resulting in an individual seeking medical treatment, vehicular damage resulting in an insurance claim and/or police report, and incidents where the California Highway Patrol was contacted.

- 21. ADOPT-A-HIGHWAY SIGNS:** The Department shall furnish, install, and maintain an Adopt-A-Highway courtesy sign(s) and standard recognition panel(s) at the adoption site in recognition of the

Permittee's contribution. Standard recognition panels shall display the Permittee's name in black, block letters on a white background. Permittees may furnish a customized, recognition panel(s) at their own expense. Specifications for the recognition panel's wording, size, color, type style, placement, and any subsequent modifications shall be solely determined and approved by the Department. (Note: "Spot" Wildflower adoptions do not meet minimum requirements for a courtesy sign.) **The Adopt-A-Highway Program and its courtesy signs are not a forum for advertisement or public discourse.**

22. WHEN AN ADOPT-A-HIGHWAY CONTRACTOR IS UTILIZED:

Individuals, organizations, and businesses may adopt segments of highway and have the required adoption work performed by a professional business through contract or agreement. Contractors must submit a separate Adopt-A-Highway Permit Application and will be issued a "double permit." Only contractors that have been pre-approved by the Department may be utilized. In order to receive Departmental approval, contractors must submit and maintain the following documents:

- A. Liability Insurance:** Contractors with employees shall maintain \$1,000,000 of general liability insurance for each occurrence, plus \$2,000,000 of excess liability insurance (totaling \$3,000,000). Contractors who do not utilize paid employees shall maintain \$1,000,000 in general liability insurance for each occurrence; no excess liability insurance is required. All certificates of liability insurance shall name the State of California Department of Transportation as additional insured.
- B. Vehicular insurance,** in the minimum amount of one million dollars, is required of all contractors.
- C. Worker's compensation insurance,** in the minimum amount of one million dollars, is required for contractors who employ persons to perform work authorized under this permit.
- D. Professional licensing** as required by the California State Contractors Licensing Board and/or the California Department of Pesticide Regulation to perform work authorized under this permit. **Subcontracting is not permitted under the Adopt-A-Highway Program.**
- E. County and/or city business licenses** as required by local governments to perform work authorized under this permit.

Contractors are required to provide a minimum notice of 30 days to the Department's District Adopt-A-Highway Coordinator or State-wide Adopt-A-Highway Coordinator before any reduction in coverage and/or cancellation of coverage becomes effective.

- 23. INSTALLATION OF RECOGNITION PANELS BY ADOPT-A-HIGHWAY CONTRACTORS:** Adopt-A-Highway contractors may install recognition panels at specific locations if the work is authorized on page one of the attached Encroachment Permit (Adopt-A-Highway) and they have received an Adopt-A-Highway Service Contractor Recognition Panel Installation Order.

24. SAFETY PROCEDURES FOR ADOPT-A-HIGHWAY CONTRACTORS:

- A. Attend a Caltrans safety orientation.** Adopt-A-Highway contractors shall abide by safety requirements set forth by California Occupational Safety and Health Administration (Cal-OSHA). The contractor's crew leader must schedule and attend a safety orientation given by the Department's representative within two weeks of this permit's date of issue. The "Adopt-A-Highway Safety Orientation Checklist for Contractors" will be reviewed, signed, and a copy given to the permittee.

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ADOPT-A-HIGHWAY PERMIT SPECIAL PROVISIONS

TR-0156 (Rev. 06/2007)

- B. Report Injuries, Accidents, and Incidents.** The following occurrences shall be reported to the District Adopt-A-Highway Coordinator by the next business day. Injuries resulting in an individual seeking medical treatment, vehicular damage resulting in an insurance claim and/or police report, and incidents where the California Highway Patrol was contacted.
- 25. PERMITS FROM OTHER AGENCIES:** This permit is invalid if the permittee has not obtained all permits necessary and required by law, from Cal-OSHA, the Public Utilities Commission of the State of California (PUC), the California State Contractors Licensing Board, the California Department of Pesticide Regulation, or any other public agency having jurisdiction.
- 26. COST OF WORK:** Unless stated in the permit, or a separate written agreement, the permittee shall bear all costs incurred for work within the State right of way and waives all claims for indemnification or contribution from the State.
- 27. LABOR CODE COMPLIANCE - PREVAILING WAGES:** If the scope of work granted under this Adopt-A-Highway permit is performed under a contract between the Permittee/Adopter and a contractor, and falls within the parameters of the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, repair or maintenance, The Permittee/Adopter herein agrees to require its contractor to conform to the provisions of Labor Code sections 1720 through 1815, all applicable regulations and coverage determinations issued by the Department of Industrial Relations. Adopt-A-Highway Adopters agree to include prevailing wage requirements in any service contract for public work. Work performed by Adopt-A-Highway Adopter's own forces or persons working voluntarily without compensation are exempt from the Labor Code's prevailing wage requirements.
- 28. UNDERGROUND SERVICE ALERT (USA) NOTIFICATION:** Any excavation requires compliance with the provisions of Government Code Section 4216 et. seq., including, but not limited to, notice to a regional notification center, such as Underground Service Alert (USA). The permittee shall provide notification at least 48 hours before performing any excavation work within the right of way.
- 29. ARCHAEOLOGICAL/HISTORICAL:** If any archaeological or historical resources are revealed in the work vicinity, the permittee shall immediately stop work and notify the Department's Maintenance field representative.
- 30. DURATION OF PERMIT:** Unless otherwise specified, this permit is valid for five calendar years from the date of issuance. Permittees may apply for additional five-year permits, provided the that the permittee and/or the permittee's contractor have satisfactorily met the terms of the existing permit and the site remains suitable for adoption. If the permittee wishes to reapply, a notice of such intent shall be submitted to the District Adopt-A-Highway Coordinator at least 30 days prior to the expiration date of this permit.
- 31. NO PRECEDENT ESTABLISHED:** This permit is issued with the understanding that it does not establish a precedent.
- 32. RESPONSIBILITY FOR DAMAGE:** The State of California and all officers and employees thereof, including but not limited to the Director of Transportation and the Deputy Director, shall not be answerable or accountable in any manner for injury to or death of any person, including but not limited to the permittee, persons employed by the permittee, persons acting in behalf of the permittee, or for damage to property from any cause. The permittee shall be responsible for any liability imposed by law and for injuries to or

death of any person, including but not limited to the permittee, persons employed by the permittee, persons acting in behalf of the permittee, or for damage to property arising out of work, or other activity permitted and done by the permittee under a permit, or arising out of the failure on the permittee's part to perform his obligations under any permit in respect to maintenance or any other obligations, or resulting from defects or obstructions, or from any cause whatsoever during the progress of the work, or other activity or at any subsequent time, work or other activity is being performed under the obligations provided by and contemplated by the permit.

The permittee shall indemnify and save harmless the State of California, all officers, employees, and State's contractors, thereof, including but not limited to the Director of Transportation and the Deputy Director, from all claims, suits or actions of every name, kind and description brought for or on account of injuries to or death of any person, including but not limited to the permittee, persons employed by the permittee, persons acting in behalf of the permittee and the public, or damage to property resulting from the performance of work or other activity under the permit, or arising out of the failure on the permittee's part to perform his obligations under any permit in respect to maintenance or any other obligations, or resulting from defects or obstructions, or from any cause whatsoever during the progress of the work, or other activity or at any subsequent time, work or other activity is being performed under the obligations provided by and contemplated by the permit, except as otherwise provided by statute.

The duty of the permittee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. The permittee waives any and all rights to any type of expressed or implied indemnity against the State, its officers, employees, and State contractors. It is the intent of the parties that the permittee will indemnify and hold harmless the State, its officers, employees, and State's contractors, from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence, whether active or passive, primary or secondary, on the part of the State, the permittee, persons employed by the permittee, or acting on behalf of the permittee.

For the purpose of this section, "State's contractors" shall include contractors and their subcontractors under contract to the State of California performing work within the limits of this permit.

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Exhibit 7

Who Can Participate?

- Individuals
- Organizations
- Businesses
- City, county, state, and federal agencies

You can perform the work with your own volunteers or hire a contractor to perform the work on your behalf.

Depending on the adoption site and subject to Caltrans approval, minors, aged 16 and older, may participate. Groups including minors must have at least one adult supervisor over the age of 21 at the site for every five minors present.

How Long Do Adoptions Last?

Adopt-A-Highway Encroachment Permits are issued for a period of five years. You may reapply for additional five-year permits, provided that you (or your contractor) have satisfactorily met the terms of the existing permit and the site remains suitable for adoption. You may not transfer your encroachment permit to another organization.



How Do I Adopt a Highway?

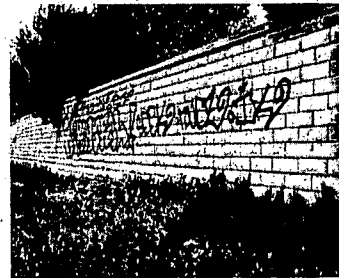
- Decide on the general location and type of adoption you want.
- Discuss the location and project with your local Caltrans Adopt-A-Highway Coordinator. (Contact information is provided on page 6 of this brochure.)
- Submit a completed Adopt-A-Highway Permit Application to your coordinator. Applications are available on our web site (see page 6.)
 - If you are hiring a contractor, they must submit a separate permit application.
 - If your adoption includes planting or vegetation control, you will be required to submit work plans and schedules along with your application. Handouts, containing instructions for preparing plans and schedules, are available from your Adopt-A-Highway Coordinator and on our web site (see page 6):
- Obtain approval of your recognition panel's wording and design from your coordinator.
- Wait for your Adopt-A-Highway Encroachment Permit (signaling your acceptance into the program) to arrive in the mail. This may take several weeks.
- Make sure that you understand and can conform to all of the provisions listed in your Adopt-A-Highway Encroachment Permit Special Provisions BEFORE beginning work.

What if the Section I Want Is Already Adopted?

When an existing adopter gives up a site, it is offered to the first group on the waiting list.

You must submit an Adopt-A-Highway Permit Application to be placed on the waiting list. Your name can be put on a waiting list for one or more sites and will be ranked according the date your completed application was received.

Please be aware that it could take many years to cycle through a waiting list. If there is a long waiting list for the area you want, you may wish to consider participating in another type of adoption for that highway section, or consider adopting in another location.



Exhibit

8

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More from Logan Jenkins**Minutemen relocation by Caltrans is garbage****LOGAN JENKINS**

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January 31, 2008



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MOST POPULAR

"You are a traitor to the United States. Get out."

As complete e-mails go, this one deserves a prize for punchy precision.

Sent by Liz DeMarco, Hayward-based founder of Americans for Mass Deportation, the two sentences neatly sum up what a squad of readers thought of my Jan. 20 column.

Boiled down, here's what I wrote: Caltrans drove off the road when it granted to the San Diego Minutemen a permit to clean trash near the San Clemente checkpoint.

Displaying a stunning lack of political foresight, Caltrans created its own roadside lightning rod, setting itself up for politicized bolts from extremists on both sides of a national debate that often borders on lunacy.

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In arguing this point, I emphasized that any self-respecting civil libertarian would have to endorse the Minutemen's legal right to clean up a stretch of highway.

For support, I cited the infamous Missouri legal case in which, thanks in part to the backing of the American Civil Liberties Union, the Ku Klux Klan's Adopt-A-Highway permit was upheld by the Supreme Court.

The local Minutemen appear to be well within their rights to participate in the anti-litter program and bask in positive PR.

Though the Minutemen's communications about – and actions against – undocumented immigrants (or "aliens," as they prefer to say) can be creepy, they don't compare to the KKK's storied past.

The moral of the first chapter of this cautionary tale?



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Caltrans' error was in granting the volatile checkpoint *location* to the Minutemen, not the permit itself.

Now comes the next chapter in what could be a long and loopy saga.

Caltrans has taken down the Minutemen sign near the checkpoint and offered the self-appointed border rangers a less controversial location: a stretch of state Route 52, near Santee.

Jeff Schwilk of Vista, the San Diego Minutemen's spokesman, professed to be "frankly dumbfounded" by Caltrans' switcheroo. The hard-line group is reportedly planning a lawsuit to regain the coveted checkpoint site.

No surprise there. In the running border war, no side seems to miss an opportunity to exploit an opportunity to cry foul.

...

Last week, three members of the Latino Caucus – Assemblyman Joe Coto, D-San Jose; Sen. Gil Cedillo, D-Los Angeles; and Assemblywoman Lori Saldaña, D-San Diego – met with Caltrans Director Will Kempton, according to a spokesman in Saldaña's office.

The Latino lawmakers reportedly stressed that public safety would be threatened if the Minutemen picked up litter near the Border Patrol checkpoint.

Presumably, Latino and civil-rights champions might be roused to challenge the Minutemen – and hell could break loose.

In free-speech terms, the Minutemen sign in that sensitive location is akin to yelling "Fire!" in a crowded theater. It's an incitement to violence.

Kempton assured the Latino politicians that the sign would be removed, according to Saldaña's spokesman.

On Monday, local Caltrans District Director Pedro Orso-Delgado notified Schwilk that his clean-up location had been changed to Santee. Orso-Delgado concluded with an ominous paragraph:

"Please be advised that the Department is currently examining allegations of violent behavior and/or advocacy of violence by your group. Under the AAH Program eligibility criteria, entities that advocate violence, violation of the law, or discrimination based upon race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex or sexual orientation may not participate in the Program. These allegations warrant careful examination and the Department will conduct this review in an expeditious fashion."

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The subtext is pretty clear: Minutemen, you're on notice. If our investigation shows that you're as awful as Latino and civil-rights groups allege, you may be judged to be unworthy of picking up trash on California's highways.

In other words, according to our rules, you may be worse candidates than the KKK was in Missouri!

Now that's where I, American traitor or not, saddle up the high horse and gallop to the defense of the Minutemen.

■ ■ ■

I take it as a given that the various (and confusing) factions of the Minutemen have their share of live-wire associates, many of them whipped into a frenzy daily by fire-breathing talk-radio hosts.

Nevertheless, the stated ambitions of the Minutemen are nothing if not law-abiding.

Their oft-repeated mantra sounds like a patriotic country-western song: "What part of *illegal* don't you understand?"

The demonization of the Minutemen is red meat for those sympathetic to the plight of undocumented workers, but it's a fool's errand for Caltrans.

It's a dicey enough argument that the Minutemen pose a real and present danger if they hang around the checkpoint with Glad Bags.

But if Caltrans concludes that the border defenders are too despicable to pick up litter *anywhere*, they'll be courting a much-deserved legal defeat – and handing a coup to the publicity-hungry Minutemen.

As I say, Caltrans should have seen this wreck coming and turned to avoid it. The symbolically loaded checkpoint site should never have been offered to the Minutemen in the first place.

Well, too late to turn back the clock. The Santee gambit, awkward as it is, makes sense.

In trying to shake free of a self-created mess, Caltrans must understand that there's a ton of trash talk on both sides of the border debate.

Keep driving straight ahead – and this too shall pass.

■ **Logan Jenkins:** (760) 737-7555; logan.jenkins@uniontrib.com.

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Exhibit 9

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Minutemen exit I-5, get new road to adopt



ROAD RAGE: Minutemen's adoption of a stretch of I-5 near the border angered immigration-rights groups.

By Richard Marosi, Los Angeles Times Staff Writer
January 30, 2008

SAN DIEGO -- Caltrans has given the San Diego Minutemen a new stretch of road to clean up for the Adopt-A-Highway program, moving the group that fights illegal immigration from Interstate 5 near the U.S. Border Patrol checkpoint to a quieter, less visible state highway.

Caltrans officials say the change was made because of safety concerns.

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Last week, members of the state Latino Legislative caucus warned Caltrans that the signs indicating the San Diego Minutemen's stretch of freeway on I-5 could draw protesters to the busy area near San Clemente.

Caltrans workers removed the signs from the northbound and southbound lanes Monday night. The group's new two-mile stretch of highway is located along California 52 in eastern San Diego County near Santee.

That highway has much less traffic than I-5, which handles 160,000 cars per day near San Clemente, and doesn't have the "distractions" of a Border Patrol checkpoint," said Caltrans District Director Pedro Orso-Delgado.

"Hopefully that eliminates a lot of the potential risk," said Orso-Delgado.

The San Diego Minutemen wasn't the first such group to sign up for an Adopt-A-Highway program. The Campo Minutemen adopted a county road in southern San Diego County last year.

But news that the San Diego group had been given the spot on I-5 was strongly criticized.

Immigrant-rights groups argued that the Minutemen shouldn't be allowed to participate in Adopt-A-Highway, which has rules barring groups that advocate violence or discrimination. The Minutemen said they advocated neither.

Caltrans officials said the group had been given the stretch of freeway including the Border Patrol checkpoint by chance. But critics called the location especially troubling.

Enrique Morones, president of the immigrant-rights group Border Angels, said some

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extremist activists were threatening to take down or spray- paint the signs.

Jeff Schwilk, the San Diego Minutemen founder, said he was considering legal action to keep the original stretch of highway, where the group held its first cleanup two weeks ago. Ten members collected trash without incident, he said.

"Caltrans could be violating their own rules of discrimination by revoking our permit," said Schwilk. "We're not going to relinquish it voluntarily."

California Department of Transportation made the decision after the meeting with a delegation of Latino legislators, including state Assembly members Lori Saldana (D-San Diego) and Joe Coto (D-San Jose) and state Sen. Gil Cedillo (D-Los Angeles), said Joe Kocurek, Saldana's press secretary.

Orso-Delgado said Caltrans is reviewing the group's eligibility after receiving numerous phone calls and e-mails from individuals and organizations. He said Caltrans had not ruled out barring the group from the program.

San Diego police searched Schwilk's home last year while investigating a complaint of vandalism at a migrants camp in northern San Diego County. But Schwilk said neither he nor members of his group have ever been arrested for immigrant-related violence.

richard.marosi@latimes.com

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DISCUSSION

Share your thoughts on this report.

1. As a Latino native born and raised in Los Angeles, I fully support the Minutemen. They should throw out every illegal immigrant back to where they came from.
Submitted by: Latino feed up with illegals
12:51 PM PST, Jan 30, 2008

2. Look, if the Feds are inept in combating illegal immigration, then it's up to the state government to enforce our immigration laws. Now, if the Governor is incompetent in enforcing our laws, then it's up to local gov't to enforce it. If the local gov't also fails to uphold our immigration laws, then it's up to us citizens to make sure they are enforced. For those of you politically correct ninnies who think this enforcement is racist, Mexico has a more stringent enforcement than ours.
Submitted by: Harry
12:42 PM PST, Jan 30, 2008

3. Hats off to the MINUTEMEN! We true American Patriots support you!
Submitted by: pba20420
12:39 PM PST, Jan 30, 2008

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